

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart G – ACEP-ALE Deed, Title, and Plan Requirements

528.60 Agricultural Land Easement Deed Requirements

A. General Provisions

- (1) The statutory purpose of ACEP-ALE is to protect the agricultural use and future viability and related conservation values of land by limiting nonagricultural uses of the land and to protect grazing uses and related conservation values by restoring and conserving eligible land. Therefore, ACEP-ALE funds must result in long-term protection of agricultural land and the provisions of funded agricultural land easements must limit the nonagricultural use of the land.
- (2) Activities that meet the definition of agricultural uses provided in 7 CFR Section 1468.3 and as described in section 528.33D(2) are deemed agricultural uses of the land for the purposes of ACEP-ALE. Activities that are not considered agricultural uses must be prohibited or limited to ensure the parcel remains available for agricultural uses.
- (3) NRCS is required by law to ensure that ACEP-ALE funded agricultural land easement deeds contain provisions that ensure the ACEP-ALE purposes will be met. NRCS ensures that ACEP-ALE funds will result in agricultural land protection by—
 - (i) Evaluating land for ability to effectively protect agricultural and related conservation values using eligibility and ranking criteria.
 - (ii) Reviewing pre-existing rights in the property, such as mortgages, liens, and leases, to ensure there are not pre-existing conditions that would limit the ability of the parcel to meet program purposes.
 - (iii) Identifying minimum ACEP-ALE deed requirements and conducting reviews of agricultural land easement deeds to ensure provisions meet the program purposes and requirements.
- (4) NRCS safeguards the public investment in agricultural land protection by requiring the eligible entity to place, monitor and enforce appropriate prohibitions and limitations on nonagricultural uses in the deed terms. The eligible entity's deed terms must prohibit or limit nonagricultural uses that are incompatible with agricultural uses and uses that involve a relatively irretrievable commitment of agricultural resources.
- (5) The eligible entity will acquire the agricultural land easement, hold title to the agricultural land easement, and manage, monitor, and enforce the agricultural land easements, with the United States holding a right of enforcement. If multiple entities will co-hold an ACEP-ALE funded agricultural land easement as grantees of the agricultural land easement, all such entities are considered the beneficiary of federal funds and will be required to comply with the terms of the cooperative agreement. Cooperating entities may co-hold an easement when either of the following apply:
 - (i) All easement holders are party to the cooperative agreement.
 - (ii) All easement holders have provided to NRCS sufficient documentation of their status as sub-recipient of Federal funds and acknowledgement of the requirement to comply with the terms of the cooperative agreement.
- (6) When negotiating the terms of a conservation easement deed, the eligible entity and landowner should consult with their own attorneys to ensure that all legal requirements and any applicable Internal Revenue Service requirements are met.
- (7) Subtitle H of the Food Security Act of 1985 Section 1265(a) provides for the purchase of an easement “or other interests in eligible land.” Such other interests must have the same

purpose of protecting the agricultural use of the land and must follow the same guidelines as agricultural land easements set forth in this manual. Wherever the terms “agricultural land easement,” “conservation easement,” “agricultural land easement deed,” or “conservation easement deed” appear, they include such other interests in eligible land. State offices must obtain prior approval by EPD director for any use of ACEP-ALE funds towards the acquisition of “other interests in land.”

B. Survey Requirements

- (1) The legal description of the ACEP-ALE parcel must conform to the description set forth in the title records for the funded parcels. Existing surveys or boundary descriptions for the parcel and the appropriate record book and page as well as the tax parcel number must be referenced in the deed.
- (2) Legal descriptions of the ACEP-ALE parcel must comply with the survey standards in the State in which the parcel is located. Both existing and new legal descriptions must close to within the tolerances set by the State survey standards. NRCS has no separate ACEP-ALE boundary or survey standards or requirements.
- (3) The eligible entity must obtain a new boundary survey and legal description to State survey standards if any of the following apply:
 - (i) The ACEP-ALE funded easement area is less than or only a portion of the entire property described in the current legal descriptions of record, unless NRCS determines the current legal description is adequate for ACEP-ALE purposes.
 - (ii) NRCS determines the current legal description is not accurate.
 - (iii) The ACEP-ALE funds are being used to protect less than the entire area protected by a larger conservation easement.

C. Baseline Documentation

- (1) The eligible entity must provide a baseline documentation report for each parcel to NRCS prior to closing on the easement (see Subpart U, “Exhibits,” for baseline documentation example). The baseline report must be incorporated into the agricultural land easement deed by reference.
- (2) The noncertified eligible entity must provide NRCS a draft baseline documentation report at least 90 days prior to the planned closing date of the agricultural land easement. Certified eligible entities must provide NRCS the baseline documentation report at the time payment request is submitted.
- (3) The baseline documentation report must contain maps and full descriptions and pictures of items including but not limited to: property location, land use, land cover and its condition; crops and crop rotations; condition of the grassland, pasture, range, hay or forest lands; animal inventories and waste storage facilities; any critical nesting habitat for declining populations of grassland dependent birds; all physical structures, infrastructure and improvements, including barns, sheds, corrals, fences, ponds, watering facilities, and roads; irrigation rights and volume of irrigation water rights to be retained for the easement; any problem areas; and any special features for which the parcel is being protected, such as historical or archeological resources. (See Subpart U, “Exhibits,” for baseline documentation report items).

D. Minimum Deed Requirements

- (1) The eligible entity may use its own terms and conditions for the deed of agricultural land easement and must ensure that agricultural land easements acquired with funds made available under the cooperative agreement meet the following requirements:
 - (i) Address all of the minimum deed requirements identified at 7 CFR Section 1468.25(d).

- (ii) Conveyed for the purpose of protecting natural resources and the agricultural nature of the land.
 - (iii) Run with the land in perpetuity or where State law prohibits a permanent easement, for the maximum duration allowable under State law.
 - (iv) Protect the agricultural use, future viability, and related conservation value, of the parcels by limiting nonagricultural uses of that land or protect grazing uses and related conservation values by restoring and conserving eligible land. This may include specific protections related to the specific purposes for which the parcel was selected, including historical or archaeological resources or grasslands of special environmental significance.
 - (v) Provide for the effective administration, management, and enforcement of the agricultural land easement by the eligible entity or its successors and assigns.
 - (vi) Subject the parcel to an approved agricultural land easement plan.
 - (vii) Include the required United States Right of Enforcement language.
 - (viii) Provide the United States access to the easement area sufficient to ensure compliance pursuant to its right of enforcement.
 - (ix) Specify that impervious surfaces will not exceed 2 percent of the ACEP-ALE easement area, excluding NRCS-approved conservation practices, unless NRCS grants a waiver (see paragraph F below).
 - (x) Prohibit commercial and industrial activities except those activities that are consistent with the agricultural uses of the land.
 - (xi) Prohibit the subdivision of the property subject to the agricultural land easement, except as described in paragraph H below.
 - (xii) Includes other minimum deed terms specified by NRCS to ensure that ACEP-ALE purposes are met.
- (2) For cooperative agreements with noncertified eligible entities, the agricultural land easement deed must be approved by NRCS prior to closing and must be submitted to NRCS at least 90 days before the planned easement closing date.
 - (3) For grant agreements with certified eligible entities, NRCS review of the agricultural land easement deed will occur after acquisition in accordance with the provisions of the grant agreement and the requirements of this manual.
 - (4) NRCS may request the Office of General Counsel's assistance with agricultural land easement deed reviews.

E. Agricultural Land Easement Duration

ACEP agricultural land easements must be perpetual or for the maximum duration under applicable State laws. Where State laws have not authorized or prohibit perpetual conservation easements, ACEP agricultural land easements must be for the maximum duration authorized by State law, but under no circumstances less than 30 years. Some States allow landowners the right to revisit and terminate their conservation easements after a certain time period. Agricultural land easements that contain such language may only be funded if such termination rights are mandated by State law. NRCS may choose not to fund agricultural land easements in States that allow for the termination of a conservation easement.

F. Impervious Surface

- (1) Impervious surfaces will not exceed 2 percent of the ACEP-ALE easement area, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the parcel; this includes, but is not limited to, residential buildings, agricultural buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to agricultural land easement.

- (2) The noncertified or certified eligible entity may submit a request for waiver of the 2-percent impervious surface limitation for each parcel to the State Conservationist not less than 90 days prior to closing on the easement. The State Conservationist may waive the 2-percent impervious surface limitation on an individual easement basis, provided that no more than 10 percent of the easement area is covered by impervious surfaces.
- (3) Before waiving the 2-percent limitation, NRCS will consider, at a minimum, population density; the ratio of open, prime, and other important farmland versus impervious surfaces on the easement area; the impact to water quality concerns in the area; the type of agricultural operation; parcel size; and the purposes for which the easement was acquired. All approved impervious surface waivers will be documented and the evidence retained in the individual easement case file.
- (4) An eligible entity may also request a waiver to employ its own process for waiving the impervious surface limitation if the process is applied on an individual easement basis. The eligible entity's process for waiving the impervious surface limitation must be approved by the NRCS Deputy Chief for Programs. The entity must submit its request along with the details of their process to the State Conservationist for their review. If the State Conservationist concurs with the process and recommends approval, the State Conservationist must forward their recommendation, along with the entity request and process information to EPD at least 90 days prior to planned closing date.
- (5) NRCS will not approve blanket waivers or an entity process that approves blanket waivers of the impervious surface limitation. All ACEP-ALE easements must include language limiting the amount of impervious surfaces within the easement area.

G. Building Envelope

- (1) The eligible entity must prepare a map of existing and proposed building envelopes for each parcel and submit it to NRCS at least 90 days prior to the planned closing date.
- (2) In general, the future location of any building envelopes should be identified on the map attached to the deed. The agricultural land easement may allow buildings envelopes to be located after closing, if the deed specifies the number of floating building envelopes and requires State Conservationist approval of the location prior to construction.
- (3) State Conservationist approval will be conditioned on locating the building envelope, to the greatest extent possible—
 - (i) To not include prime farmland.
 - (ii) Near existing roadways.
 - (iii) Near existing buildings, structures, and other approved building envelopes.

H. Subdivision

- (1) In general, the agricultural land easement deed should prohibit future subdivision of the protected property. If the landowner intends to subdivide a parcel in the future, individual applications should be submitted for the individual intended subdivided parcels and ranking conducted on the individual applications. If the smaller parcels rank high enough to be selected for funding, separate agricultural land easements may be purchased on the individual parcels.
- (2) The eligible entity must address the potential for future subdivision in the agricultural land easement deed. The eligible entity may include provisions to prohibit subdivision of the easement area entirely, except where State or local regulations explicitly require subdivision to construct residences for employees working on the agricultural land easement area.
- (3) If the eligible entity instead of prohibiting future subdivision of the protected property wants to provide for the future subdivision of the protected property, then the agricultural land easement deed must identify the maximum number of future parcels. Additionally, if the boundaries of the proposed subdivisions—

- (i) Are identified and approved by the State Conservationist prior to closing, both the approved number and boundaries must be identified in the agricultural land easement deed. No further NRCS review is required at the time of future conveyance of the parcels as identified in the deed.
- (ii) Are not identified prior to closing, the eligible entity must submit a request to the State Conservationist for approval prior to authorizing a subdivision. The entity must certify that the requested subdivision is required to keep all farm or ranch parcels in production and viable for agriculture use and that separate conveyance of the farm or ranch parcels subject to the agricultural land easement will move the land from one agricultural operation to another. The State Conservationist must determine that—
 - Parcels resulting from the subdivision of the protected property will meet ACEP land eligibility requirements of 16 U.S.C. Section 3865 et seq. as enacted on the date the original parcel was enrolled in ACEP, including the allocation of the impervious surface limitation between the subdivided parcels.
 - The resulting parcels will not be below the median size of farms in the county or parish as determined by the U.S. Department of Agriculture’s most recent National Agricultural Statistical Survey (NASS).

I. Agricultural Land Easement Deed Recording and Signature

- (1) The agricultural land easement deed must meet the requirements of the State and county recording statutes where the agricultural land easement deed will be recorded.
- (2) The holder of the agricultural land easement must accept the agricultural land easement deed. Acceptance is indicated by an authorized official of the holder signing the agricultural land easement deed on an acceptance page.
- (3) The United States is not a grantee but holds certain limited rights in the agricultural land easement. Acceptance by the holder of the agricultural land easement will give rise to the rights of the United States in its right of enforcement in the agricultural land easement.
- (4) The United States is not required to sign the ACEP-ALE funded agricultural land easement to give rise to the United States Right of Enforcement. No representative of the USDA will sign the ACEP-ALE funded agricultural land easement unless signature by a third party right of enforcement holder is required by State law. If State law requires such acceptance, States must obtain EPD review and approval of the acceptance document prior to closing and the acceptance document may only be signed by the State Conservationist.

528.61 Guidelines for Agricultural Land Easement Deed Review

A. Deed Review for Noncertified Eligible Entities

- (1) Although the noncertified eligible entity may use its own terms and conditions in the agricultural land easement deed, there are certain provisions that must be included in the agricultural land easement deed for it to be legally sufficient, conform to agency policy, and be consistent with the purposes of ACEP-ALE. These provisions are addressed in the “Minimum Terms for the Protection of Agricultural Use”, which NRCS has established in the “ALE Minimum Deed Terms” addendum (see Subpart U, “Exhibits,” for the “ALE Minimum Deed Terms” addendum). The addendum is a standing exhibit to the cooperative agreement.
- (2) The eligible entity may introduce its own deed terms, including those that are consistent with but more restrictive than the ALE minimum deed terms. If the eligible entity introduces its own deed terms that are inconsistent with the ALE minimum deed terms, the ALE minimum deed terms will control. The ALE minimum deed terms themselves may not be modified except for appropriate changes to meet formatting requirements.

- (3) Use of standardized ALE minimum deed terms will expedite NRCS review of agricultural land easements, streamline program delivery, increase the transparency of program requirements, ensure the equitable treatment of all participants, and reduce inconsistency in the long-term management and enforcement of the easements
- (4) All agricultural land easement deeds must be provided to the NRCS State office 90 days prior to the planned closing date and must be approved by NRCS prior to closing. The level of NRCS review and type of approval required for individual easement deeds prior to closing is based on how the eligible entity elects to incorporate the ALE minimum deed terms.
 - (i) If an eligible entity elects to attach the “ALE Minimum Deed Terms” addendum to the deed, review by EPD is not required; instead, review will be conducted by the State Conservationist who will verify that the—
 - Terms of the addendum are not modified.
 - Addendum is signed by the landowner and eligible entity and attached to the agricultural land easements deed at the time of closing and recordation.
 - Paragraph below is inserted at the bottom of the agricultural land easement deed:

This agricultural land easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP). The EXHIBIT ____ is attached hereto and incorporated herein by reference and will run with the land in perpetuity [or for the maximum duration allowed under applicable State laws]. As required by 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468 et seq. and as a condition of receiving ACEP funds, all present and future use of the protected property identified in EXHIBIT ____ (legal description or survey) is and will remain subject to the terms and conditions described forthwith in this addendum entitled “Minimum Deed Terms For The Protection Of Agricultural Use” in EXHIBIT ____, that is appended to and made a part of this easement deed.
 - (ii) If the eligible entity elects not to attach the “ALE Minimum Deed Terms” addendum to the agricultural land easement deed, then the eligible entity will ensure that ALE minimum deed terms as written in the “ALE Minimum Deed Terms” addendum are included in the body of every agricultural land easement deed. The agricultural land easement deed must be reviewed and approved for use by EPD prior to the eligible entity requesting an advance of the Federal share or closing on an agricultural land easement.
 - (iii) Upon mutual agreement by NRCS and the eligible entity, the cooperative agreement may be amended to include an agricultural land easement deed template if the provisions of the deed template address the ALE minimum deed terms and is approved by EPD in advance of the amendment. If the eligible entity elects to use the approved template without changing any terms or conditions, review of the individual, final agricultural land easement deeds by EPD is not required; instead, review will be conducted by the State Conservationist who will verify that the individual, final agricultural land easement deed is the same as the EPD-approved template. Verification by the State Conservationist must be completed prior to the eligible entity requesting an advance of the Federal share or closing on the easement.
- (5) NRCS will conduct quality assurance reviews on the agricultural land easements acquired by the eligible entity under the cooperative agreement. If the final deeds contain modifications to the ALE minimum deed terms, NRCS may require the deeds to be remedied and may terminate the cooperative agreement.

528.62 Title Review and Clearance

A. Title Review Requirements

- (1) Prior to purchasing an agricultural land easement, onsite inspections, due diligence, and landowner interviews must be completed and all title evidence must be reviewed to ensure that programmatically and legally sufficient title in the property is obtained. These reviews will include thorough examination of both unrecorded and recorded exceptions to the title to determine whether any existing exceptions to the title, encumbrances, agreements, leases, easements, other clouds on the title, or other circumstances exist that would in any way undermine NRCS's ability to achieve the purposes of the program or the eligible entities ability to enforce the easement.
 - (i) For cooperative agreements with noncertified eligible entities, the review and documentation will be completed by the eligible entity and NRCS, and issues must be remedied by the landowner and the entity prior to closing the easement.
 - (ii) For grant agreements with certified eligible entities, the review and documentation will be completed by the eligible entity, and issues must be remedied by the landowner and the entity prior to closing the easement. Documentation submitted to NRCS will be reviewed for compliance after the easement is acquired. Any noncompliance issues identified by NRCS must be remedied by the landowner and the entity.
- (2) The eligible entity will obtain and review a title commitment, preliminary title report, or other form of preliminary title evidence along with all underlying documents for each parcel selected for funding, and must provide copies to NRCS. The eligible entity will evaluate the title, including all outstanding and reserved interests in the parcel. The eligible entity must inform NRCS of any potential impacts those recorded and unrecorded interests may have on the agricultural land easement deeds ability protect the agricultural uses by limiting the nonagricultural uses.
- (3) The eligible entity and NRCS must also consider unrecorded interests in the parcel such as lease holders, unauthorized occupants or users, or other evidence of interests discovered through landowner interviews and site visits. States are required to use the "Preliminary Certificate of Inspection and Possession" form to determine and document the presence of unrecorded liens, leases, options, or other claims against the property that may impact the landowner's ability to provide clear title to the property or impact the ability to achieve the purposes of the program on the parcel. The "Preliminary Certificate of Inspection and Possession" form must be completed by NRCS prior to issuing the easement payment.
- (4) NRCS will determine whether the recorded and unrecorded exceptions will prevent the easement from achieving the purposes of the program. NRCS will take into consideration the eligible entity's review and findings.
- (5) The "Certificate of Use and Consent" form and related addendum must be completed for all parcels selected for funding. Each exception must be fully documented as either acceptable or needing to be removed or subordinated, or other appropriate remedy. Each exception must be documented on the "Certificate of Use and Consent" form and must include a description of the exception, the recommendation for addressing the exception, and the basis for the recommendation. (see Subpart U, "Exhibits," for a title exception guide). Below are examples of recommendations, brief descriptions, and rationales that may appear on the "Certificate of Use and Consent" form:
 - (i) Administratively acceptable outstanding rights would not interfere with agricultural land easements ability to protect the agricultural uses by limiting the nonagricultural uses. Examples of administratively acceptable outstanding rights include are rights-of-way and easements for existing roads and utilities (e.g., electric, gas, sewer, water, or communications). The "Certificate of Use and Consent" documentation may appear as follows:
 - Acceptable – Existing 30-foot-wide power line right-of-way on southerly easement boundary, power line located on the perimeter of the field, no long-term negative impacts anticipated to result from presence or maintenance of power line.

(ii) **Administratively Waived Outstanding Right.**—Administratively waived outstanding rights include third-party rights where a diligent effort was made to acquire the outstanding right without success, there is a low risk that the third-party rights will be exercised, and the impact on the agricultural value would be acceptable if exercised. All efforts to acquire the rights and the rationale for determining that the probability is low for the third-party to exercise those rights must be documented in writing. In these situations, the State Conservationist may approve the funding of the easement subject to these outstanding rights. Examples of administratively waivable outstanding rights include—

- Mineral rights held by third parties and approved by the State Conservationist using the mineral rights matrix located in 440-CPM, Part 527, Subpart Y, “Exhibits.”
- Alternative legal access approved by the State Conservationist in accordance with subsection B below that does not meet the standard requirements of being an insurable, unconditional, or transferable legal right of recorded access for the term of the easement.
- The certificate of use and consent documentation may appear as follows:

Acceptable – Existing natural gas lease held by over 50 parties due to multiple generations of inheritance of rights, located in an area with no known reserves and no infrastructure for transport; mineral assessment has determined very low likelihood of future exploration or extraction, no long-term negative impacts anticipated to result from presence or maintenance of outstanding gas lease.

(iii) **Unacceptable Outstanding Rights.**—Administratively unacceptable outstanding rights include, but may not be limited to—

- Liens against the property (mortgages, mechanic’s liens).
- Right-of-way and easements that prevent the agricultural use of the property.
- Provisions that require the United States to—
 - Commit to future appropriations.
 - Make a payment by a specific date.
- Rights not clearly defined or that might limit the agricultural land easements ability to protect the agricultural uses by limiting the nonagricultural uses.
- Rights that could unduly interfere with the agricultural use of the property.
- The certificate of use and consent documentation may appear as follows:
 - Must be subordinated or removed: Existing county flowage easement, allows county to subject the land to permanent flooding, levee has been intentionally and accidentally breached numerous times, a permanent breach of the levee is currently being examined and has a high likelihood of approval, permanent flooding of the parcel would preclude future agricultural use;
 - Must be subordinated or removed: mortgages;
 - Must be removed: judgments, mechanics, or tax liens.

Note: For certified eligible entities, the certified eligible entity rather than NRCS will complete a certificate of use and consent or a substantively similar document, prior to acquisition of the agricultural land easement. Within 30 days of recordation or request for reimbursement, whichever is sooner, the certified eligible entity will provide the NRCS State office a copy of the final recorded agricultural land easement deed, copy of the final policy of title insurance, and a copy of the certificate of use and consent or similar document.

- (6) The landowners and eligible entities are responsible for providing clear title to the property, which may require such remedies as—
 - (i) Securing a subordination or release of the rights from the third party owner/lessee of the pre-existing rights.
 - (ii) Terminating or cancelling leases or options.
 - (iii) If prior to acquisition: reconfiguring the boundaries of the parcel to eliminate or reduce to a minimal level the surface impact the full exercise of the rights will have on the parcel. If the acreage of the parcel changes by more than 10 percent it must be re-ranked. The reconfiguration cannot reduce the parcel's ranking score below that of the lowest scoring parcel funded in the same fiscal year the subject parcel is funded.
- (7) The eligible entity must provide NRCS with documentation that all unacceptable exceptions have been remedied. For noncertified eligible entities, this documentation must be provided to NRCS 30 days prior to the planned closing date for reimbursements and 60 days prior to the planned closing date for advances (see subpart I). The State Conservationist may not disburse funds or approve the closing of an agricultural land easement if there are any unacceptable outstanding rights to the parcel. For certified eligible entities, this documentation must be provided upon request and issues identified by NRCS must be remedied in accordance with NRCS instructions and the terms of the grant agreement.

B. Access to Agricultural Land Easements

- (1) This subsection pertains to all new ACEP-ALE applications and all pending agricultural land easement transactions that NRCS has entered into under ACEP-ALE and former FRPP. Agricultural land easements must have sufficient access as described in this part to be eligible to receive and retain ALE cost-share assistance.
- (2) The landowner and eligible entity are responsible to ensure sufficient access to the entire easement area and provide evidence of access to NRCS. The State Conservationist is responsible to determine if the provided access is physically and legally sufficient to allow ingress and egress to the entire easement area in the event that NRCS has to exercise the United States' Right of Enforcement.
- (3) Sufficient access requires NRCS to have both physical and legal access to the entire easement area (also referred to as the parcel) to be able to exercise the rights it obtains under the agricultural land easement purchased by the eligible entity.
 - (i) Physical access is sufficient if NRCS can reliably, safely, and efficiently conduct onsite visual and physical inspections of the parcel to monitor compliance with the terms of the agricultural land easement and the agricultural land easement plan (including any component plans such as a conservation plan on highly erodible cropland, grazing plan on grassland, or forest management plan on forest land) throughout the term of the easement.
 - (ii) Legal access is sufficient if the access offered by the landowner and the eligible entity is an insurable, unconditional, and transferable legal right of recorded access for the term of the easement.
 - (iii) If the State Conservationist determines that the identified access does not satisfy the legal access requirements described in subsection (ii) above, then they may consider alternative legal access as described in subsection (iv) below across lands owned by the United States (Federal lands), such as lands managed by the Bureau of Land Management (BLM) or the U.S. Forest Service (USFS), subject to the following conditions:
 - The landowner and eligible entity must provide documentation to the State Conservationist that it is not practicable to acquire legal access as described in subsection (ii) to the entire easement area. Such documentation may include—
 - A map showing that the parcel is landlocked by adjacent lands owned by the United States.

- If the parcel is adjacent to but not landlocked by lands of the United States, written evidence that the landowner has made one or more offers to acquire access across adjacent non-Federal lands and those offers have been rejected and that the only other way to access the parcel is across adjacent lands owned by the United States.
 - The landowner and eligible entity agree to include assurance in the agricultural land easement deed that access will continue to be provided and maintained comparable to the current access for the duration of the easement.
- (iv) Alternative legal access is sufficient when the landowner can provide proof of any of the following access rights that provide a link from a public roadway or other legal access point to the easement area:
- Use of roads owned and maintained by the United States and managed by Federal agencies such as the BLM and USFS (this may include numbered system roads).
 - Use of rights of way authorized under the Federal Land Management Policy Act (FLPMA) of 1976.
 - Use of reciprocal rights of way between the landowner and a Federal agency.
 - Long-term access permits issued by a Federal agency, 30 years or greater in length, that may be renewed upon agreement of the landowner and the Federal agency.
 - A letter from an authorized representative of a Federal agency establishing the landowner's permission to cross the Federal land for casual use.
- (v) The eligible entity must provide documentation to NRCS that the land meets the above criteria for alternative legal access.
- (vi) The "Certificate of Use and Consent" must be used to document in the file that the access to the parcel has been administratively considered and whether or not it has been found to be sufficient. If alternative legal access is used, it must be documented on the "Certificate of Use and Consent," signed by the State Conservationist, and retained in the individual easement case file.

C. Title Insurance Requirements

- (1) When securing title insurance, at a minimum, the eligible entity must—
- (i) Acquire ALTA title insurance for all acquisitions in the full amount of the agricultural land easement purchase price.
 - (ii) Provide NRCS with a copy of the title insurance commitment and all supporting documents at least 90 days in advance of the planned closing date.
 - The title commitment must be free and clear of any and all outstanding rights or encumbrances on the title except those that NRCS decides are administratively acceptable or waivable.
 - If any such encumbrances are acceptable or waivable, they must be listed on the certificate of use and consent. Any encumbrances that are not acceptable must be removed or subordinated to the provisions of the agricultural land easement deed.
 - (iii) Ensure the title insurance company is approved by the State insurance commissioner or its equivalent.
- (2) If an eligible entity fails to meet these minimum requirements, NRCS may terminate funding.

528.63 The Agricultural Land Easement Plan

A. General

- (1) All ACEP-ALE easements must be subject to an agricultural land easement plan (ALEP) and may also require component plans to address specific land uses or resource concerns on the parcel. At a minimum all ALEPs must—

- (i) Describe the activities which promote the long-term viability of the land to meet the purposes for which the easement was acquired, this may include a farm or ranch succession plan.
- (ii) Include a description of the farm or ranch management system, and, if applicable, irrigation water right volumes needed for the agricultural activity on the easement. The ALEP may incorporate or refer to information from baseline documentation reports, as appropriate.
- (iii) Identify required and recommended conservation or management practices that address the purposes and resource concerns for which the parcel was selected, such as those identified on the ALE ranking sheet, the land eligibility determinations, waiver requests, the cooperative agreement or deed, or other project documents. The ALEP may incorporate or cross-reference practices identified in other plans, such as an organic systems plan for organic operations, a comprehensive nutrient management plan for animal feeding operations, or care of historic sites for easements with historical or archeological resources.
- (iv) Identify additional or specific criteria associated with permissible and prohibited activities consistent with the terms of the deed. For example, if a deed specifies that the location of the building envelope may be adjusted if it does not adversely affect the agricultural resources, the ALEP should describe the agricultural resources and how they may be impacted by construction of structures. Not every ALEP will need to specify additional or specific criteria for deed terms; whether such criteria are required should be determined by NRCS based on the agricultural resources present on the property and the clarity of the deed restrictions.
- (v) Establish a limit on the impervious surfaces to be allowed consistent with the farm or ranch management system and consistent with the limitations identified in the deed.
- (vi) If the parcel includes grassland, highly erodible land (HEL) or forest land, a component plan must be incorporated by reference into the ALEP. Conservation or management practices or activities included in an attached component plan do not need to be identified separately in the ALEP. Component plans must be developed for each land use type present on the parcel, as follows:
 - A grasslands management plan is required if the parcel meets the land eligibility criteria in section 528.33B(3). An ACEP-ALE grasslands management plan must meet the requirements identified in section 528.63B, below.
 - A conservation plan is required if the parcel contains HEL. Additionally, where appropriate, the conservation plan may include conversion of highly erodible cropland to less intensive uses. An ACEP-ALE conservation plan must meet the requirements in section 528.63C, below. NRCS or another NRCS-certified planner is responsible for assisting with the development of an HEL conservation plan.
 - A forest management plan is required if the parcel contains contiguous forest that exceeds the greater of 40 acres or 20 percent of the total easement area. A forest management plan must meet the requirements in section 528.63D, below.
- (3) The eligible entity is responsible for providing the ALEP and any required component plans to NRCS for the agency's review and approval. The eligible entity may elect to have NRCS or a qualified third party develop the required plans. State Conservationists must ensure the plans address the minimum criteria identified in this part, whether the plan is developed by NRCS or a third party.
- (4) If the eligible entity requests NRCS to develop the plans, this should be identified in the cooperative agreement. NRCS is authorized to provide direct technical assistance for NRCS to develop the plans. If NRCS develops the plans, it will be done so in consultation with the eligible entity and the landowner and in accordance with Title 180, National Planning Procedures Handbook (NPPH), Part 600, and the NRCS Field Office Technical Guide (440-528-M, First Ed., Amend. 95, March 2015)

- (FOTG). State Conservationists must work with the entity to ensure planning is requested and occurs with sufficient time to allow NRCS to complete and for the entity and landowner to review and sign the plans prior to easement closing.
- (5) If a third party develops the ALEP, it is at the eligible entity's own expense. NRCS review and approval of the ALEP developed by a third party is as follows:
 - (i) For cooperative agreements with noncertified entities, the ALEP must be approved by NRCS and signed by the landowner and the eligible entity prior to easement closing.
 - (ii) For grant agreements with certified eligible entities, the ALEP must be signed by the landowner and the eligible entity prior to easement closing. NRCS review of the ALEP will occur after acquisition in accordance with the terms of the grant agreement and as part of the quality assurance review process. The eligible entity may request NRCS review and approval of the ALEP prior to closing.
 - (6) The eligible entity is responsible to ensure compliance with any required provisions of the agricultural land easement plan.

B. Grasslands Management Plan Component Requirements

- (1) The grasslands management plan must describe the grassland types on the easement area and the management systems and practices needed to conserve, protect, and enhance the viability and functions and values of those grasslands. The functions and values of grasslands are the ecosystem services provided, including but not limited to domestic animal productivity, biological productivity, plant and animal richness and diversity, fish and wildlife habitat (including habitat for pollinators and native insects), water quality and quantity benefits, aesthetics, open space, and recreation.
- (2) The grasslands management plan must include—
 - (i) A baseline description of the grassland resource, to include the species components of the grassland, such as an ecological site description or, at minimum, a brief description of the grassland species composition.
 - (ii) A description of the grassland management system consistent with NRCS practices contained in the eFOTG, including the prescribed grazing standard for easements that will be managed using grazing.
 - (iii) The management of the grassland for grassland-dependent birds, animals, water quality and quantity benefits, or other resource concerns for which the easement was enrolled.
 - (iv) The permissible and prohibited activities.
 - (v) Any associated restoration plan or conservation plan.
- (3) The grasslands management plan may be updated and amended as necessary to include management changes for protection of grassland resources as needed. Changes to the grasslands management plan must be consistent with ACEP policy and maintaining the grassland resources.
- (4) At a minimum, the grasslands management plan must be reviewed during the annual monitoring of the easement by the eligible entity to determine if the current grassland management is consistent with the plan and the changes to the plan are needed.

C. Conservation Plan Component Requirements

- (1) At the time of application, every parcel landowner must file a Form AD-1026, "Highly Erodible Land and Wetland Conservation Certification," at the local USDA service center. By signing the AD-1026, the each landowner certifies that they are in compliance with HEL and wetland conservation (WC) provisions on all farms or ranches in which the landowner has an interest. The AD-1026 gives NRCS authorization to enter upon and inspect the property for the purpose of confirming HEL and WC compliance.

NRCS must confirm all landowner HEL/WC eligibility requirements are met at the time of obligation and again prior to payment.

- (2) Where highly erodible croplands are included in the enrollment, a conservation plan component of the agricultural land easement plan will be developed by NRCS or an NRCS-certified planner in accordance with the provisions outlined in Title 180, National Food Security Act Manual (NFSAM), and the NPPH. Implementation of any provisions required under the conservation plan must occur within one year unless the State Conservationist grants an extension due to conditions beyond the landowner's control.
- (3) The conservation plan may require conversion of highly erodible cropland to less intensive uses. All such plans must be reviewed and approved by NRCS and signed by the landowner and the eligible entity prior to closing.
- (4) The conservation plan is considered "up-to-date" as long as there are no changes to the agricultural operations on the parcel. If there are changes the agricultural operations on the parcel, the conservation plan must be updated. The eligible entity and landowner must update the plan in the event the agricultural uses of the property change.
- (5) The eligible entity must report any changes in the agricultural operation from the previous year on its annual monitoring report. If a change in operations is reported, the eligible entity must instruct the landowner to schedule an appointment with NRCS to have the conservation plan updated within 12 months. If, at the time of the next annual monitoring report, the landowner has not obtained an updated conservation plan (and it is not due to inaction by NRCS), then the landowner is in violation of the provisions of the agricultural land easement and the eligible entity is responsible to bring the landowner into compliance.
- (6) NRCS will monitor the status of the conservation plan in accordance with HEL/WC status review requirements. Prior to entering the protected property, NRCS will notify the landowner in accordance with NFSAM procedures.
- (7) A violation of the conservation plan will be considered a violation of the agricultural land easement, once all appeal rights have been exhausted. (See section 528.92 for violation procedures.)

D. Forest Management Plan Component Requirements

- (1) A forest management plan component is necessary if the ACEP-ALE enrollment contains contiguous forest that exceeds the greater of 40 acres or 20 percent of the easement area.
- (2) The forest management plan component describes the management system and practices to conserve, protect, and enhance the viability of the forest land. A forest management plan component contains a brief description of the forest land with a map identifying the forest land area.
- (3) The forest management plan component must be provide a description of how the forest contributes to the economic viability or how the forestland serves as a buffer to protect from development along with the any management components needed to maintain the economic viability or buffer status.
- (4) Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. Section 2103a), another practice plan approved by the State Forester, or another plan determined appropriate by NRCS. The plan complies with applicable Federal, State, Tribal, and local laws, regulations, and permit requirements. The forest management plan will also include any reference to current private, industry, State, or local forest management plans that the enrolled forest area is currently under. A copy of the referenced plans may be included if available.
- (5) At a minimum, the forest land management plan must be reviewed during the annual monitoring of the easement by the eligible entity to determine if the current grassland management is consistent with the plan and the changes to the plan are needed.

E. Agricultural Land Easement Plan Practice Implementation Cost Share Sources

- (1) Landowners may pursue cost-share assistance to implement conservation practices identified in the agricultural land easement plan through other USDA conservation programs, such as the—
 - (i) Agricultural Management Assistance Program (AMA).
 - (ii) Conservation Reserve Program (CRP) where authorized by FSA.
 - (iii) Conservation Stewardship Program (CSP).
 - (iv) Environmental Quality Incentives Program (EQIP).
 - (v) Regional Conservation Partnership Program (RCPP).
- (2) The availability of financial assistance for a landowner through the above-mentioned programs is subject to the eligibility requirements, policies, and procedures of the individual programs.
- (3) ACEP-ALE is not authorized to provide cost-share assistance for the installation or implementation of conservation practices.